IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION NO :23384 of 2006

Dated: 30th November 2006.

Between:
Battu Venkata Kathamma, Vijayawada, Krishna District.

..... PETITIONER

AND

The Deputy Commissioner of Commercial Taxes,
Vijayawada-I Division, Vijayawada and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

W.P.NO.23384 OF 2006

ORAL ORDER:
(Per the Hon'ble Sri Justice J.Chelameswar)

This writ petition is filed with the prayer as follows:

> " For the reasons stated in the accompanying affidavit, the Petitioner prays that this Hon'ble Court may be pleased to issue an appropriate Writ or Order or Direction particularly in the nature of Writ of Mandamus declaring the action of the 1st Respondent in issuing Form No.6 notice of assumption under Section 29 of Revenue Recovery Act, 1864 appointing the 4th Respondent to have charge over the property of the Petitioner published and gazetted in the District official Gazette vide No.8(3), dated 31-08-2006 as illegal, unjust, import, void and against to the provisions of the Andhra Pradesh General Sales Tax Act, 1957 as well as the Transfer of Property Act as also to the principles of natural justice as the Petitioner is not in any arrears of sales tax nor she has mingled/colluded with any of the persons who are claimed to be due of the amounts to the Department and to set aside the gazetted dated 31-08-2006 gazetted in the Krishna District Gazette No.8(3) and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The petitioner is the wife of the 3rd respondent herein. The 3rd respondent is a proprietor of a business

concern by name M/s. Watch Centre, at Vijayawada and an assessee on the rolls of the 2nd respondent under the A.P.G.S.T. Act. With reference to the assessment years 1996-97, 1997-98 and 1998-99, the proprietary concern, mentioned above, fell in arrears of tax under the A.P.G.S.T. Act. For the recovery of the said arrears, it appears that the 4th respondent issued a demand notice dated 16-06-2004, under the A.P. Revenue Recovery Act, 1864, demanding an amount of Rs.11,23,652/-. On 05-07-2004, a notice of attachment under Form No.5, under the abovementioned Act, was issued attaching certain property, which is specified in the said notice. Consequently, the 1st respondent issued proceedings in Form No.6, notifying in the District Gazette concerned, that the property specified in the Form No.5, was stood attached by proceedings dated 05-07-2004, and the 4th respondent was "**appointed to have charge of it**". Challenging the said Gazette notification, the present writ petition is filed by the petitioner, who claims to have acquired title to the property, by virtue of a registered gift deed made by the 3rd respondent on 28-03-2003.

The learned counsel for the petitioner argues that the impugned notice is illegal, void and contrary to the provisions of the A.P.G.S.T. Act, the Transfer of Property Act and also the principles of natural justice as there was no notice to the petitioner prior to the attachment.

Heard the learned Government Pleader for Commercial Tax.

Under Section 16-C of the A.P.G.S.T. Act, a charge on the property of the dealer is created for the amount of tax or any other sum payable under the Act, in the following lines.

> "**16-C. Liability under this Act to be the first charge** : Notwithstanding anything to the contrary contained in any law for the time being in force, [any amount of tax, Government loan extended to the dealer due to treating deferred tax as deemed to have been paid, penalty, interest] and any other sum if any, payable by a dealer or any other person under this Act, shall be the first charge on the property of dealer, or such person."

It can be seen from the language of the abovementioned Section that a charge on the property of a dealer, from whom any amount of tax or other sum is due under the provisions of the act, is created by a statutory declaration. Section 17(a) of the A.P.G.S.T. Act makes a further declaration that the various kinds of transfers, specified in the said Section, of the assets of any dealer during the pendency of the proceedings under the Act, when made with an intention to defraud the revenue, are void as against any claim under the Act. However, under the *proviso* to the said Section, transfers made for

adequate consideration without notice of the proceedings under the Act or transfers made with the previous permission of the Assessing Authority, are saved from the embargo created under the enacting Section. Section 17-A reads as follows:

> **17-A. Transfers to defraud revenue void**: Where during the pendency of any proceeding of any proceeding under this Act, or after the completion thereof any dealer creates, a charge on, or parts with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of any of his assets in favour of any other person, with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax, or any other sum payable by the dealer as a result of the completion of the said proceeding or otherwise."

On an examination of the language of Section 17-A, it is clear that a transfer by way of a gift of one of the assets of the dealer, during the pendency of the proceedings under the Act, which ultimately culminate in the determination of the liability of the dealer to pay either tax or any other amount under the act, is a void transaction.

Admittedly, the gift deed in favour of the petitioner was made on 28-03-2003 and the amounts due under the

Act, which are sought to be recovered by the impugned action, pertain to the period anterior to the date of the gift. In such circumstances, the gift insofar it pertains to a claim in respect of the tax under the A.P.G.S.T. Act, is a void gift, which does not create any right in favour of the petitioner.

It can be seen that, the only transfers that are saved from the declaration of nullity contained under the enacting Section being Section 17-A, are the transfers of property made for adequate consideration and also without notice of the pendency of the proceedings under the Act against the transferee. By definition under Section 122 of the Transfer of Property Act[W], gift is a transfer of property without consideration. Therefore, the petitioner cannot claim even the benefit of the said proviso.

The learned counsel for the petitioner, however, relied on a judgment of the Supreme Court in **AHMEDABAD MUNICIPALITY v. HAJI ABDUL**[1]. It was a case where the owner of certain immovable property fell in arrears of tax as due to the Ahmedabad Municipality. The property was under a mortgage, though it is not very clear from the judgment what was the date on which the property was mortgaged. The mortgaged property was sold in execution of a decree obtained by the mortgagee. After the Court sale was concluded the Ahmedabad Municipality initiated

proceedings for the recovery of the arrears of tax due to it by attaching the abovementioned property and proposing to sell the same. The purchaser in the Court auction, resisted the proceedings initiated by the Ahmedabad Municipality. The Municipality asserted that under Section 141 of the Bombay Provincial Municipal Corporation Act, 1949, there is a charge created on the assets of the person, who is liable to pay taxes to the Municipality and therefore, the transfer of the property in favour of the auction purchaser is subject to the said charge. The Supreme Court repelled the said submission on the construction of Section 100 of the Transfer of Property Act, in the following lines:

> " This section in unambiguous language lays down that no charge is enforceable against any property in the hands of a transferee for consideration without notice of the charge except where it is otherwise expressly provided by any law for the time being in force. The saving provision of law must expressly provide for enforcement of a charge against the property in the hands of a transferee for value without notice of the charge and not merely create a charge."

The auction purchaser in the said case being a purchaser for valuable consideration, was, *per se*, saved under Section 100 of the Transfer of Property Act. The

case on hand is not a case of a transfer of property for consideration. As already noticed, the petitioner claims the property by virtue of a gift made in favour of her.

In the circumstances, we are of the opinion that the decision of the Supreme Court, relied upon by the learned counsel for the petitioner, has no application to the facts of the present case.

Coming to the question whether the petitioner is entitled for a notice before attachment of the property, in view of the declaration under Section 17-A of the A.P.G.S.T. Act, that the transfer in favour of the petitioner is a void transfer, on the admitted facts mentioned above, we do not propose to go into that question and decline to exercise the jurisdiction for issuing a writ of Mandamus.

For the foregoing discussion, the writ petition is dismissed at the stage of admission.

J.Chelameswar, J

D.Appa Rao, J

30th November 2006
mrk

W **122. "Gift defined**.- "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

[1] AIR 1971 SUPREME COURT 1201